Judicial Approach Towards Implementation of Right To Healthy Environment In Nashik - A Critical Study

SUBMITTED BY

Mrs. Vrushali Gulabrao Patil
BSL., LL.M., M. Phil
Email - vrushalithorat@rediffmail.com
Mobile - 9850043674

UNDER THE SUPERVISION OF

Dr. Vikas Khakare

Associate Professor
Narayanrao Chavan Law College,
Nanded

SUBMITTED TO

SWAMI RAMANAND TEERTH MARATHWADA UNIVERSITY,

NANDED

FOR THE AWARD OF DOCTOR OF PHILOSOPHY

JUDICIAL APPROACH TOWARDS IMPLEMENTATION OF RIGHT TO HEALTHY ENVIRONMENT IN NASHIK - A CRITICAL STUDY

- **INTRODUCTION**-

It has been universally accepted that human happiness and growth which are fundamental for the well- being of the society cannot be achieved without preservation and the protection of the environment. The protection and the preservation of the environment is integral to the culture, religion of the most of the communities, nature is seen as an essential part of the society at large. Good environment also essential to ensure basic human rights, even the right to life, in a degraded environment. An example will highlight the importance of a green and healthy environment. Misuse of our natural resources, a key environmental issue, has direct impact on fundamental human rights such as right to food, right to water, right to air and right to life itself. It is important to draw linkages between environment and human rights to further build bridges between legislations relating to the two. The relationship between man and his environment is undergoing profound changes in the wake of modern scientific and technological developments. In India, from time to time various laws have been enacted for the protection of environment, flora and fauna.

The Indian Constitution is the first Constitution in the world which contains specific provisions for the protection and improvement of environment.

The term environment generally connotes surroundings; a more specific meaning which has been assigned to the term environment covers the physical surroundings that are common to all living beings and includes air, space, water, land, plants, wild life, flora-fauna etc.

According to the Section 2(a) of the environment protection act, 1986 [1]defines ”environment” which includes water, air and land and the interrelationship which exists between them on the one hand and human beings living creatures ,plants, micro-organisms and the property on the other.

Similarly the meaning of the term right to healthy environment defines the vast interpretation in the decisions of the various case laws given by the judiciary like-

[1]H.N. Tiwari, ”Environmental Law, Allahabad Law Agency, Law publishers Faridabad(Haryana).

The supreme court in ***Rural Litigation & Entitlement Kendra, Deharadun. Vs. State of Uttar Pradesh***[2]for the first time recognized the right to live in healthy environment as a part of article 21.

In *chetriya Pardushan Mukti Sangarsh Samiti v. State of UP* [3]**–**
Every citizen has a fundamental right to have the enjoyment of quality of Life and living as contemplated by Article 21 of the Constitution of India. Anything, which endangers or impairs that quality of life, is entitled to take recourse to Article 32 of the Constitution of India.

In *Subhash Kumar v. State of Bihar* [4]-the right to life enshrined in Article 21 includes the right to enjoyment of pollution free water and air for the full enjoyment of life. If anything endangers or impairs the quality of life, an affected person or a person genuinely interested in the protection of society would have recourse to Article 32.

In *Virendra Gaur v. State of Haryana*[5]-Article 21 protects right to life as a fundamental right. Enjoyment of the life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water.

In *L.K. Koolwal v. State of Rajasthan* [6]Maintenance of health, sanitation and environment falls within Article21 thus rendering the citizens the fundamental right to ask for affirmative action.

Such wide interpretations of Article 21 by the Supreme Court have over the years become the bedrock of environmental jurisprudence, and have served the cause of protection of India's environment (and to a lesser extent, of livelihoods based on the natural environment). Adding to this is a large number of laws relating to environment, enacted over the last few decades

[2]AIR 1985 SC 652 .
[3]AIR 1990 SC 2060
[4]AIR 1991 SC 420.
[5]www.ijhssi.org retrieved from website on 11.30pm dt-06-09-2017
[6]ibid

In India, in view of the various constitutional provisions and other statutory provisions contained in various laws relating to environment protection, the Supreme Court has held that the essential feature of "sustainable development "such as the "Precautionary Principle" and the "Polluter Pays Principle" are part of Environmental law of the Country. The Forty-Second Amendment Act: Environmental protection and improvement were explicitly incorporated into the Constitution by the Constitution (Forty- Second Amendment) Act of 1976. Article 48A was added to the Directive Principles of State Policy. It declares: 'The State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country.' Article 51A (g) In a new chapter entitled 'Fundamental Duties', imposes a similar responsibility On every citizen 'to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creature. Together, the provisions highlight the national consensus on the importance of environmental protection and improvement and lay the foundation for a jurisprudence of environmental protection.

The decisions of the courts and the constitutional insertion of the important provisions relating to importance of the environment protection with the guarantee of the right to healthy environment at all given a path for future generation to tackle with the various occurrences happen in future time.

- **STATEMENT OF PROBLEM-**

1) The life of the human beings is ended with the bodily diseases, guaranteed under the constitution of the India.
2) The present legal mechanism not justifies the right to healthy environment of the people at large.
3)The decisions of the judiciaries are abide with restrictions provided in the provisions of the environmental policies.

- **IMPORTANCE OF THE STUDY-**

We see around us growing evidence of human-caused harm in many regions of the earth:
• Dangerous levels of pollution in water, air, earth and living beings;
• Destruction and depletion of irreplaceable life forms and natural resources;
• Major and undesirable disturbances in the earth's climate and protective layers;
• Gross deficiencies, harmful to physical, mental and social health, in the living and working environments of humans, especially in cities and industrial complexes. In the above context,

it is important to recognize our dependence on the earth's natural resources. *Natural resources such as air, water, and land are fundamental to all life forms: they are, much more than money and economic infrastructure, the base of our survival.* To large numbers of humanity, especially communities that have been termed 'ecosystem people' (*people depending on the natural environments of their own locality to meet most of their material needs*), natural resources are the base of survival and livelihoods. It is not only humans that are affected, but all other life forms too. The concept of environment as a basic human right must also encompass a respect for the right of other speciesto survive on this planet. There are anywhere between 5 and 50 million species of plants, animals, and micro organisms haring the earth with us, and each has a value of its own, a role to play in a vast, complex web of interdependent connections. This range of species, the habitats they live in, and the internal genetic diversity they display, is called biological diversity or biodiversity. Such diversity is part of our daily lives and livelihoods, constituting resources upon which families, communities, nations and future generations depend. Biodiversity has numerous uses in agriculture, medicine, food and industry. It helps to maintain ecological balance and
Evolutionary processes, and has spiritual, cultural, aesthetic and recreational values. Its loss is, therefore, a part of the erosion of environmental human rights.[7]

- **INTERNATIONAL STATUS[8] -**

International concerns with human rights, health and environmental protection have expanded considerably in the past several decades. In response, the international community has created a vast array of international legal instruments, specialized organs, and agencies at the global and regional levels to respond to identified problems in each of the three areas. Often these have seemed to develop in isolation from one another

At the international level with United Nations declaration on human right provides that right to health includes healthy living conditions. Similarly the protection of the Environment has been integral to the cultural and religious ethos of most of the human communities. After the Stockholm Conference, there have been a number of important international conferences & declarations on the specific problems of environment. Like second United Nations conference on Human Settlements (HABITAT –II) 1996, Nairobi declaration, Vienna convention for the protection of Ozone Layer 1985, Basel Convention on the control of Trans boundary

[7]Ashish Kothari and Anuprita Patel, "Environment and human rights"
An introductory essay and essential readings, retrieved from website www.nhrc.nic.in on 11.00pm dt 14/09/2017.
[8]ibid

Movements of Hazards Wastes and Other disposal 1989, United Nations Conference on Environment and development (UNCED) known as Earth summit 1992, RIO declaration on Environment and development, climate change Convention 1992, convention on Biological Diversity 1992. Are some of them which included with the important provision stated the efforts at international level for the protection of the environment and given justice to the right to the healthy environment.

- **NATIONAL STATUS** -

At national level more than eighty constitutions now contain provisions establishing the right to a safe and healthy environment and/or the duty of the state to protect the environment and health of its inhabitants. The primary argument in favour of such a right is that it elevates the entire spectrum of environmental issues to a place as a fundamental value of society, to a level equal to other rights and superior to ordinary legislation. In the absence of guaranteed environmental rights, constitutionally-protected property rights may be given automatic priority instead of balanced against health and environmental concerns. Other rights may similarly be invoked to strike down environmental and health measures that are not themselves rights-based.

This national extension to right to life was recognized even without specific reference to actual and specific violations of fundamental right.

- **LOCAL STATUS** -

In Nasik, today, live in a built environment which suffers from the spatial side effects of technological overdose that has been administrated in hurry. The faceless 189uninspiring architecture, blood pressure increasing traffic conditions, lungs hollowing pollution, social interaction discouraging housing areas tension creating psychos cape, crime, corruption prone city sphere the filth clogged wings of birds the oxygen gasping creature are some of the consequences of the indiscriminate technology application in pursuit of short term economic goals to attend civilization which we call cities. Some the key urban problems that are worldwide in their character and severity basically due to both expansion of population and physical expansion of the cities. The developing world's cities have their characteristic problems. The explosive increase in population, gross inadequacy of infrastructural facilities and services, overcrowding and traffic jams, ribbon development, crumbling old city centres , urban blight, neighbourhood degradation, expansion of slums and spontaneous settlements, insanitary backyards and public places etc., culminating in an urban crisis, are characteristics

of the cities of developing countries. In this chapter the major urban problems, of Nasik city has been studied such as housing, city bus transportation, water supply, pollution and health.

- **SIGNIFICANCE OF THE STUDY** -

The long-term good health of populations depends on the continued stability and functioning of the biosphere's ecological and physical systems, often referred to as life-support systems. We ignore this long-established historical truth at our peril: yet it is all too easy to overlook this dependency, particularly at a time when the human species is becoming increasingly urbanized and distanced from these natural systems. The world's climate system is an integral part of this complex of life-supporting processes, one of many large natural systems that are now coming under pressure from the increasing weight of human numbers and economic activities. These situations need to combine the judiciary in protecting the environment and justify the right to healthy environment.[9]

1) The Strength of the nation is depends upon healthy environment for the citizens-

Human beings are certainly both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the right to life itself[10]. Whenever the individuals are with the basic needs completed it with the use of the natural resources, it creates the relation between nature and the individual. The use of these natural resources is the step towards the spread of the slow poisoning in the society. The development process of the nation create lot of the changes in the society some are beneficial to the society and some injurious to the society. The progresses built up the society on the developed mode in the competition but at the same the responsibility of the every state are increased.

2) Protection and preservation of the right to healthy environment is urgent need-

[9] A.J. Michael," Global climate change and heal than old story writ large".

[10] Declaration of the Stockholm, 1972retrieved from www.pops.int.on 11.30 dt 14/09/2017.

Environmental health comprises those aspects of human health including quality of life that are determined by physical, biological, social and psychological factors in the environment. The relationship between the environment and its impact on human health is highly complex. Each of the effects is associated with a variety of aspects of economic and social development. Moreover, there is no single best way of organising and viewing the development-environment-health relationship that reveals all important interactions and possible entry points for public health interventions. Human beings are exposed to a variety of chemicals including industrial chemicals, pesticides, air pollutants, natural and manmade toxicants etc in the

Environment through the skin, respiratory system and gastrointestinal tract that can affect vital body systems such as pulmonary, reproductive and nervous and Immune system. Dysfunction of these systems could have far-reaching consequences, which affect individuals and even their progeny from serious health ailments.

The health disease are increased which are the serious issue for the state.

3) Socio-Legal and cultural recognition of the right to healthy environment.-

The environmental problems in the developing countries are caused by underdevelopment. Millions continue to live far below the minimum levels required for a decent human existence, deprived of adequate food and clothing, shelter and education, health and sanitation. Therefore, the developing countries must direct their efforts to development, bearing in mind their priorities and the need to safeguard and improve the environment. For the same purpose, the industrialized countries should make efforts to reduce the gap themselves and the developing countries. In the industrialized countries, environmental problems are generally related to industrialization and technological development. The explosion of population continuously presents problems for the preservation of the environment, and adequate policies and measures should be adopted, as appropriate, to face these problems. Of all things in the world, people are the most precious. It is the people that propel social progress, create social wealth, develop science

and technology and, through their hard work, continuously transform the human

environment. Along with social progress and the advance of production, science and

technology, the capability of man to improve the environment increases with each

passing day.

We have reached a point beyond doubt in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance

or indifference we can do massive and irreversible harm to the earthly environment on which our life and wellbeing depend.

4) Greater access and awareness in the area of the healthy environment-

The formulation and recognition of various doctrines and strategies signify a judicial awareness on the need for reconciliation of the developmental, socio-economic, and ecological conflicts in the present day Indian society. This awareness is reflected in the cases that came before the courts for review. Man must live and he must live well, in a healthy and safe atmosphere – this has been the judicial dictum and its entire efforts have been directed towards achieving that goal. It has, therefore, evolved diverse principles such as absolute liability, and public trust doctrine to preserve the human environment and to uphold man‘s right to live in a wholesome environment. It has ordered the closure of hazardous industries, the shifting of the place of industrial operation and the imposition of criminal responsibility on directors, for their failure in taking necessary anti-pollution measures. The court has also directed the payment of compensation to victims of environmental calamities. It has clearly specified that there can be no compromise with environmental preservation; it has to be done to ensure the survival of the coming generations and to give them a life with human dignity

On the whole, one may appreciate the bold attempts made by the Indian Judiciary to ensure the establishment of a clean, pollution-free environment. The recent pronouncements of the Supreme Court have stated about its new approach based on eco-centralism for the purpose of maintaining environmental ethics. However, the problem of locus standi is still to be sorted out. Protection and improvement of the environment is the constitutional commitment. It is pity if this public cause is lost on the ground of bias, prejudices and malafides of the litigant approaching the court. In several instances proponents make heavy investments for Eco unfriendly projects and attempt to raise the plea of fait accompli. Although the courts have expressed concern on this aspect, a more bold and consistent judicial policy has to emerge for the purpose of strengthening the regime of environment in the country. The problem of environmental justice cannot be solved only by giving the opportunity to access the court for seeking justice unless and until the judicial pronouncements are enforced effectively to provide environmental justice and put justice in place of injustice done to the public. Therefore, there is a need for fair, honest, competent and responsive enforcement machinery.

- **OBJECTIVES OF THE STUDY -**

1) To study the role of the judiciary in imparting justice for the protection of the right To healthy environment in Nasik city.
2) To consider, how to redress the problem of poor enforcement of the environmental Law in Nashik city with the help of the case laws.
3) To make suggestions for strengthening the environmental policies.
4) To study the nature and the scope of the right of the healthy environment.
5) To analyse the implementation of the right to healthy environment in Nasik city.
6) To suggest accordingly, if any.

- **RESEARCH HYPOTHESIS -**

1) The insertion of the official definition of the word environment in the actual act related to the environment protection, 1986 will be help in effective implementation of the right to healthy environment.
2) The interpretation of the term right to healthy environment directly affects very purpose of Article 21 of our constitution.
3) The meaning covered by "right to healthy environment" makes the life of the human beings unfit for living in Nashik city.
4) For observing the faith of the people on the environment policies with the interpretation given by the judiciary actually not enough and not justified the concept right to healthy environment in Nashik city.
5) Most of the peoples are aware about pollution free environment provided under the environmental policies .But, many of them are not aware about right to healthy environment included in the article 21 of our constitution.

Above hypothesis will be proceed further by using appropriate research tools

- **METHODOLOGY TO BE ADOPTED -**

The study, which is designated to investigate the status of the right to healthy environment and its awareness among the general peoples , is descriptive study. The secondary data in this study will be collected from the library, internet facility, etc. the critical analysis of the various case laws and the provisions in the environment protection policies should be studied with doctrinal research method where researcher with available written data trying to find out the solution for the benefit of the society. In this method researcher try to find out the exact loopholes in the existing available legal mechanism, the procedure of the judiciary and steps of the judiciary for giving the decision in case law. And again trying to find out the middle way for the judiciary for giving the justice to the right of the healthy environment and also to the protection of the environment. While studying the particular Nasik district for the research the researcher bound to study each and every factor related to the Nasik city like geographical area, influencing factors on the atmosphere, technology development in the industries etc.

- **AREA OF RESEARCH -**

The research work will try to give focus line on the atmosphere and the environment of the Nasik district. The last ten years (2007 - 2017) taken as a sample for the critical analysis on the judgements given by the judiciaries on the environment issues related with the protection of the right to healthy environment in the society. The Nasik city is now a day one of the struggler to become smart city it is on the golden triangle for the development. The process of the development of the Nasik city is on the progressive step where there is stage to compromise with the fundamental rights of the human beings. Many of the industries and the factories are going to be started with the technologies and the advance machineries where waste materials and the process of the manufacturing creates pollution that results in the polluted environment which injurious to life.

- **LIMITATION -**

The study covers the sample of last 10 years data related to the decisions of the courts in the Nasik city on the protection of the right to healthy environment and the protection of the environment.

The present research work is doctrinal in nature. To conduct the research work the researcher will study and scrutinize the study material available in books, case laws, references, journals and on internet. The researcher will focus on the provisions relating to the right to healthy

environment which are covered in various environment protection acts and conventions. The researcher will focuses on only the sections which come under purview of the right to the healthy environment and environment protection .while studying in detail also refer the cases related to the right to healthy environment .The researcher is going to discuss the geographical surrounding of the Nasik city and also try to find the proper solution in legal framework which give proper solution to the implementation of the right to the healthy environment.

- **REVIEW OF LITERATURE -**

The text material related with the research work up to date sufficient to find out the exact problem that how to tackle with the reality that legal mechanisms at National and International level. Lot of work already done on the subject of the environment and the constitutional rights. This study of the researcher is the contribution towards the problem of the right to healthy environment in Nasik. According to the area wise the factors like development process, climate environment etc. are responsible for the infringement of the right to healthy environment. In Nasik also as compare to others various factors are responsible for degradation of the environment and injustice towards the right of healthy environment, in this study the efforts are made towards the findings of the solution of this problem.

- **PROPOSED WORK PLAN -**

The researcher with her sincere efforts tries to complete the research work in
The following proposed time –

The collection of the data	6 Months
The critical analysis of the National and International Policies on the related subject	1 Year
The critical analysis of the decisions of the courts in the Nashik district on right to healthy environment	1 Year
The academic formalities with writing of the thesis with guidance of the research guide	1 Year

With tentative schedule Researcher trying to complete research proposal within Three years.

- **CHAPTER - I - <u>INTRODUCTION</u>**

  The chapterisation of the research work started with the first topic i.e Introduction. This Introduction again consists with the actual research problem then the introduction of the right to healthy environment and the sub topic importance of the role of the judiciary in protecting the right to healthy environment.

- **Chapter - II - <u>ENVIRONMENTAL CONCEPTS & POLICIES</u>**

  The second topic will be started with the main environmental policies related to the air water and land along with environment protection over all. In this process the study will focuses on the provisions insufficiency of the acts for imparting the justice towards the protection of the right to healthy environment.

- **Chapter - III - <u>CONSTITUTIONAL & OTHER LAWS</u>**

  While studying the third chapter topics are based on the right to healthy environment and expectations from the article 21,it includes liberal interpretation and the object of the interpretation of the article 21.

- **Chapter - IV - <u>INTERNATIONAL STATUS & POLICIES</u>**

  In the fourth topic the researcher going to discuss on the topics covered international policies related environment protection along with the right to healthy environment. the society .

- **Chapter - V - <u>JUDICIAL INTERPRETATION & ENVIRONMENTAL ISSUES</u>**

  In the fifth topic the role of the judiciary towards the protection of the right to healthy environment in Nasik city. In the next topic the judicial judgements are critically analysed in the Nasik city. And in the next sub topic researcher also studied hoe these judgements are affected on the rights.

- **Chapter - VI - <u>CONCLUSIONS AND SUGGESTION</u>**

  In the last topic researcher will trying to conclude study with sufficient provisions in the environmental enactments which are helpful to protect right to healthy environment.

- **<u>BIBLIOGRAPHY AND REFRERENCES</u>** -

Introduction: Environment as A Basic Human Right

• Agarwal, A. An Indian Environmentalist's Credo. In *Social Ecology* edited By Guha, R. 1994. Oxford University Press, New Delhi.

• Kothari, A. 1995 (a). Environment: A Matter of Survival. in Singh, M.P. and Roy, H. (eds.) 1995. *Indian Political System: Structure, Policies, Development* .Jnanada Prakashan, New Delhi.

• Krishna, S. 1996. *Environmental Politics – People's Lives and Development Choices.* Sage Publications, New Delhi. Pp. 15-28

• Ray, P. 2000. Environmental Security Can Prevent Social Instability. *Human scope* May 2000 (Pp.30-31)

The Constitutional and Legal Context

• FES and LAW-E. 2001. Proposed Amendments to the Constitution of India for Ensuring Environment Protection and Nature Conservation. Submission to the National Commission to Review the Working of the Constitution. Foundation for Ecological Security, Anand, with Legal Action for Wildlife and Environment, Delhi.

• Divan, S and Rosencranz, A. 2001. *Environmental Law and Policy: Cases, Materials and Statutes*. Oxford University Press, New Delhi.

• Upadhyay, Sanjay and Upadhyay, Videh. 2002. *Handbook on Environmental Law, Vol. 1-3*. LexisNexis-Butter worths, Delhi.

The International Context

• Agarwal, A., Narain, S., Sharma, A., and Imchen, A. 2001. *Poles Apart.* Global Environmental Negotiations Centre for Science & Environment, New Delhi.

• Kothari, A. and Kothari, M. 1993. Structural Adjustment and the Environment. *Economic and Political Weekly* XXVIII(11).

• Mahbubul Haq Human Development Centre. 2001. Human Development in South Asia 2001: Globalisation and Human Development. Oxford University Press, Karachi. (pp. 2-7)

• Samuel, John. *Development Cola, Served Chilled, and Other Writings on Social Change.* National Centre for Advocacy Studies, Pune. (Specifically, articles on 'Development cola, served chilled', and 'The lies of globalisation').

• Anderson, Michael R. 1998. *International Environmental Law in Indian Courts*, 7 REV. EUR. COMP. & INT'L ENVTL. LAW 21.

Submitted By

Mrs. Vrushali Nitin Thorat
BSL.,LL.M
Assistant Professor
N.B. Thakur Law College, Nashik.
Mobile No.9850043674
Email : vrushalithorat@rediffmail.Com

Under The Supervision Of

Dr. Vikas Khakare
Associate Professor
Narayanrao Chavan Law College,
Nanded

RERESERESEARCH METHODOLOGY
HT TO HEALTH LACKS EFFECTIVE